IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Crl.Rev.Pet.No. 2846 of 2007()

CC.238/1998 of JUDL. MAGISTRATE OF FIRST CLASS, KASARAGOD
CRA.101/99 OF ADDL.SESSIONS JUDGE, KASARAGOD

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED:

T.A. SALEEM, AGED 40 YEARS,
S/O. ABDULLAKUNHI, RESIDING AT KOLLAMPADY,
ANANGOOR, KASARAGOD TALUK.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE:

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1. STATION HOUSE OFFICER,
KUMBALA POLICE STATION, KASARAGOD.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2846 OF 2007

Dated this the 3rd day of August, 2007

O R D E R

The petitioner, who was the accused in C.C.No.238/98 on the file of JFCM, Kasaragod for offences punishable under sections 379 and 427 IPC, challenges the conviction entered and the sentence passed against him for the aforesaid offences concurrently by the courts below.

2. The case of the prosecution can be summarised as follows:-

The four accused persons of whom the revision petitioner was one, in furtherance of their common intention, committed theft of a Fiat car bearing registration No.KLS 1731 belonging to PW1 which was parked inside his house compound situated in Mangalpady Panchayat. After committing theft of the car, they committed mischief to the car causing damage to the complainant to the tune of more than Rs.2,000/-. The total value of the stolen car was Rs.66,000/-. The accused have thereby committed offences punishable under sections 379 and 427 read with section 34 IPC.

3. The petitioner who was absconding was subsequently tried in the above case in which he alone stood trial. On the side of the prosecution 13 witnesses were examined as PWs 1 to 13 and 11 documents were marked as Exhibits P1 to P11.

4. After the close of the prosecution evidence, the accused was questioned under section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence. When called upon to enter on his defence, he examined the AMV1 as DW1 and got marked Ext.D1 certificate of B register.

5. The learned Magistrate after trial, found the revision petitioner guilty of the offence and sentenced him to undergo imprisonment for three years under section 379 IPC and imprisonment for two years under section 427 IPC with a direction that the sentences shall run concurrently. On appeal preferred by the revision petitioner as Criminal Appeal No.101/99 on the file of the Additional Sessions Judge (Adhoc-I), Kasaragod, the lower appellate court dismissed the appeal confirming the conviction entered and the sentence passed against the revision petitioner.

It is the said judgments which are assailed in this revision.

6. Eventhough the learned counsel for the revision petitioner assailed the conviction entered and the sentence passed against him, in as much as the courts below have recorded the findings on the basis of the oral and documentary evidence in the case, sitting in the rarefied revisional jurisdiction, this court will be loathe to interfere with those findings. It has been conclusively established that in the night of 20.4.90, PW1 lost the Fiat car parked in his house. PW10, the Sub Inspector of Police, Kasaragod while on his patrol duty in the night of 11.5.1990 chanced to stumble upon the car in question at the chowki in the highway while he was checking vehicles. The revision petitioner and one Mohammed Kunhi were inside the car. As they were not able to satisfactorily account for their possession of the car, PW10, getting suspicious, took the car into custody and arrested the revision petitioner and the other person and registered a case which during the investigation was transferred to Kumbla Police Station. PW5, the Sub Inspector of Police, Kumbla conducted the initial investigation which was continued by PW11 and CW19 resulting in the charge sheeting of the accused , the revision

petitioner. The trial Magistrate, who had the unique advantage of seeing the witnesses and assessing their credibility, was inclined to accept the testimony of the prosecution witnesses. The conviction recorded and the sentence passed against the revision petitioner have been confirmed in appeal by the lower appellate court which has not noticed any infirmity in the appreciation of the evidence by the Magistrate. I see no reason to interfere with the conviction entered. The sentence imposed on the revision petitioner also cannot be said to be harsh or disproportionately excessive having regard to the fact that he is involved in the theft of another vehicle. I therefore, confirm the sentence as well.

This revision is accordingly dismissed.

(V. RAMKUMAR, JUDGE)

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